

NEVADA OUTDOOR RECREATION ASSOCIATION
P.O. Box 1245
Carson City, NV 89702-1245

November 03, 2004

Las Vegas Valley BLM Land Disposal EIS
PBS&J
2270 Corporate Circle, Suite 100
Henderson, Nevada 89074-6382

RECEIVED
NOV - 3 2004
PBS&J

Dear Sir or Madam:

We have reviewed the draft EIS and find it to be deficient in evaluating environmental impacts of BLM land disposals within the Las Vegas metropolitan area. Alternatives to the present disposal process have not been adequately evaluated.

- 1 The amount of acreage, location and frequency of disposals can be controlled by the BLM while local government requests for disposals are considered. At the present time local governments have been requesting auctions of public lands under the Southern Nevada Public Lands Management Act (SNPLMA) with too little consideration of the area-wide, cumulative impacts of those land disposals on the environment within the Las Vegas valley. Water availability, air quality, wastewater management, transportation, and the impacts of those disposals on nearby federally managed lands are growing concerns as the Las Vegas metropolitan area grows. The BLM should require as part of every proposed disposal of federal lands that these issues are not further exacerbated by the hasty, unplanned, uncoordinated disposal of BLM lands.

- 2 This draft EIS comes after thousands of acres of public land have already been disposed. A comprehensive analysis of the impacts of these disposals should have occurred before now. We enthusiastically support the BLM's compliance now with the National Environmental Policy Act (NEPA). Unfortunately, the issues and suggestions that we made during the scoping process have not been adequately addressed in this draft.

Alternatives

- 3 The choice of alternatives in the draft EIS is limited. Very little difference exists between the "conservation" alternative and the preferred alternative. Very little difference exists between the preferred alternative and the status quo. We believe the BLM can do better in developing alternatives that better protect our environment at the same time as public lands are auctioned to support sustainable growth in the Las Vegas metropolitan area.
- 4 We believe the BLM is in a unique position, with this EIS, to sharpen the focus of state and local governments on the impacts of BLM land sales on southern Nevada's environment. For example, public lands on the periphery of the land disposal area should be auctioned only after

Comment O-1

Response O-1 (Nevada Outdoor Recreation Association)

- 1 See General Response 1 – Parcel Nomination and Sale Rate and General Response 2 – Range of Alternatives.
- 2 As was stated in Section 1.2.2, the 1998 Las Vegas Resource Management Plan and Final EIS analyzed the potential impacts of selling over 25,000 acres at rates projected to meet demand at the time. The potential impacts of continued authorization to dispose of lands under SNPLMA in the disposal area modified by the Clark County Act are assessed in this EIS. The cumulative impacts of the disposal and development of BLM lands, including development of previously disposed lands and private lands, are described in Section 4.15.
- 3 See General Response 2 – Range of Alternatives.
- 4 See General Response 1 – Parcel Nomination and Sale Rate.

4 the impacts of those sales are considered on viewsheds, wildlife, public access, and recreation for the adjoining public lands. Cooperative agreements and conservation easements should be an option in the conveyance of public lands to the private sector. Public lands on the perimeter of the disposal boundary should not be a priority for disposal when significant amounts of public and private lands are undeveloped. The public lands and open space on the outskirts of the valley should be held in reserve until a later day when more informed judgements can be made on how those public lands may best serve the public and the community. The BLM can promote the consideration of this approach in their sales of public lands by indicating that their first priority is to dispose of public lands in the urban core where infrastructure presently exists than to convey public lands that could pose challenges for the adjoining public lands. We see nothing in the history of the SNPLMA that would preclude the BLM from promoting this philosophy and approach to public land sales in our community.

5 Another important philosophy in conveying public lands to the private sector for development involves the important resource - water. Our present, significant drought and growth rate is forcing the community to consider new sources of water. One controversial new source would be groundwater from central Nevada. The importation of groundwater from central Nevada is believed by some to have significant impacts on federal lands and the environment in the region. The BLM should not be conveying large amounts of public lands to the private sector for development unless it can be shown that water is readily available for the development of those lands. The Phoenix metropolitan area is moving towards the requirement that developers must show that there is a 100-year supply of water available for the development of property prior to development of that property. This EIS does not adequately consider the issue of long-term water availability for the development of the public lands within the SNPLMA disposal boundary.

6 Not enough consideration is given in this EIS to the rate of disposal of public lands. Not enough consideration is given to the timing of land sales throughout the SNPLMA boundary, e.g. priorities for disposals in the northwest, northern, southern, or southwest parts of the valley. We believe the BLM, through this EIS, could foster a better, more constructive dialogue in this community on where and at what rate public lands should be disposed. What we find in the EIS are statements that acreage of sales in the near term will exceed rates of disposal that we have seen in recent years. This seems to be at odds with discussions that have been occurring in the Clark County Growth Task Force on promoting infill development and seems to be at odds with statements that we're rapidly running out of water from the Colorado River for further growth.

7 We would prefer the BLM to establish criteria, in this EIS, for how the BLM will decide when, where, and to what degree to dispose of public lands. A decision-making flow-chart would be useful for the public to review and consider in deciding how lands within the SNPLMA boundary should be disposed. What weight would be given to the presence of the endangered bear paw poppy to disposal of that particular parcel of public land? What weight would be given to the availability of critical infrastructure in the vicinity of the public land? What weight would be given to the request of a local government for the sale as opposed to the federal government's desire to hold the public lands in reserve for a later day? Right now, the perception is that the BLM has little choice to regulate the location, rate, and extent of development on public lands

Comment O-1

4 See General Response 1 – Parcel Nomination and Sale Rate.

5 As was described in Section 3.3.3, the SNWA forecasts water supply and demand as part of their resource planning process and that data were used in the EIS as the best available information. The indirect impacts of increased water consumption were described in Section 4.3. It is not within the scope of this EIS to demonstrate the adequacy of SNWA's resource planning, nor to determine potential impacts of developing water resources. Development of water resources that would be considered a federal action would be subject to NEPA analysis at the time a specific proposal is made.

6 See General Response 1 – Parcel Nomination and Sale Rate.

7 See General Response 1 – Parcel Nomination and Sale Rate and General Response 2 – Range of Alternatives.

when the request is made by local governments; consequently, there are few alternatives with the present disposal process. We feel the BLM can do better, and that they have more discretion than they may realize.

Air Quality

- 8 CO modeling appears to be focused on emissions from construction equipment. We believe the increased emissions from worst-case, existing high-density development scenarios that are based on automobiles as the primary transportation mode should be included in the air-quality modeling. The presumption is that more public lands being developed within the Las Vegas valley airshed will make the attainment of air quality standards more difficult. Should the BLM continue to dispose of public lands at a high-rate if undeveloped private lands are available for development and attainment of air quality standards is problematic?

- 9 The Congress has established a goal of improving visibility throughout the nation over the long-term. In the short-term, visibility protection in Class 1 areas, such as the Grand Canyon, is a concern as more development occurs upwind of these areas. No assessment is made in this EIS of the impacts of disposal of large amounts of public lands in Clark and Lincoln counties on visibility.

- 10 PM_{2.5} emissions from the development of the public lands was not considered as well as future attainment of that standard.

- 11 An assumption is made for ozone that the Mojave generating plant will close and that oxides of nitrogen emissions will be lowered by 2018. It is not certain that the plant will close, and prevailing wind directions would indicate that ozone precursors from the Laughlin area are not likely to significantly affect ozone formation in the non-attainment, Las Vegas metropolitan area.

Sincerely,



Charles S. Watson, Jr.

Comment O-1

- 8 Construction equipment emissions were considered as a specific category in the modeling. Aggregate mobile sources, including vehicle traffic on existing and new highways, including projected increases in vehicle miles traveled related to increased population and associated development, were estimated from the best available data and were included in the model. Also see General Response 1 – Parcel Nomination and Sale Rate.
- 9 As was stated in Section 3.1.5, the closest Class I area to the Las Vegas Valley is the Grand Canyon. Visibility was not included in the air quality analysis because of the absence of Class 1 areas within 50 kilometers of the Las Vegas Valley, which is the area of concern for near field visibility analysis under EPA guidance, *Workbook for Visual Impact Screening and Analysis (Revised)*. EPA-450/R-92-023. Because PM₁₀ is the primary pollutant of concern related to the land disposal action that could impact visibility, and long range transport is not considered relevant for visibility impacts from this pollutant, only near field impacts would be a concern for the land disposal alternatives.
- 10 As was described in Section 3.1.3.1, the 24-hour PM_{2.5} value has not been exceeded and is not projected to become an attainment issue as particulate matter controls are implemented under the PM₁₀ State Implementation Plan.
- 11 Closure of the Mojave Plant is considered representative of future conditions expected in the study area, in terms of ongoing emissions sources. Closure of the facility is anticipated because an existing consent decree requires addition of pollution controls to reduce sulfur dioxide emissions, and the projected costs for the required upgrade of the facility may exceed \$1 billion. However, if the plant operator installs the required pollution controls, up to 99 percent removal of pollutants could be achieved. Under either scenario, plant emissions would be greatly reduced

11 (cont.)after the compliance deadline of the consent order, which is accurately reflected in the changes in emission sources used in the air quality model. Regarding the impact of the plant on air quality in the study area, prevailing surface winds are not the only factor considered in the air quality model. Therefore, regional pollution sources may have important impacts on air quality even where the sources are not located directly upwind of the affected areas.

Board of Directors
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Archaeo-Nevada Society

Established 1966 An Affiliate of the Nevada Archaeological Association

November 5, 2004

Las Vegas Valley BLM Land Disposal EIS
 PBS&J
 2270 Corporate Circle, Suite 100
 Henderson, NV 89074-6382

To Whom It May Concern:

Our organization would like to make several comments regarding the Las Vegas Valley Disposal Boundary Draft Environmental Impact Statement (EIS). The Archaeo-Nevada Society (ANS) is made up primarily of avocational archaeologists in the Las Vegas area and is an affiliate of the Nevada Archaeological Association. Our comments are outlined below.

Tule Springs National Register Site: According to the Draft EIS, 660 acres of the Tule Springs site are within the disposal boundary. While it is not certain this acreage will be sold, we will make an argument here for its protection in case it does remain in the disposal area.

- 1 • The most obvious value of the Tule Springs area is its concentration of extinct animal remains. It is not clear from the Draft EIS if there are any other paleontological sites with such a large number and variety of skeletal materials.
- 2 • In order for archaeologists to study the presence of early humans in the Las Vegas Valley, paleontological sites of high integrity and with a high density and variety of animal remains must be available. One of the few strategies available to study this issue is to discover human-made artifacts directly associated with extinct animal remains. To our knowledge, Tule Springs is the best example of this type of site in the Valley, and should therefore be protected. In addition, similar paleontological sites that were found during paleontological survey in the valley and may be used for early human occupation research should also be preserved.

National Register Site Eligibility:

- 3 • According to the letter beginning on page F-4 in Appendix F of the Draft EIS, the BLM did not agree with contractor recommendations of eligibility for 14 sites. We recognize it is not uncommon for archaeologists to have varied opinions on a site's eligibility based on the National Register criteria.
- The BLM would have had good reasons for not recommending eligibility for these sites, which are very briefly outlined in the letter, however, the contractor's reasons for its recommendations are not provided.
- In order to better understand this issue, we respectfully request access to the contractor's site descriptions and eligibility recommendations for these 14 sites. We understand that site locations will not be provided, as it is the responsibility of agency archaeologists to protect sites from potential harm.

3930 El Camino Street Las Vegas, NV 89103

Comment O-2

Response O-2 (Archeo-Nevada Society)

- 1 Section 3.7.1 described the paleontologic sensitive formations in the area and only those areas of high sensitivity were surveyed as was stated in Section 3.7.2.
- 2 As was stated in Section 3.5.2.2, there are 660 acres of the Tule Springs National Register Site on BLM land, with the remaining acres on land owned by the State of Nevada. Only the portion of the Site that is on BLM land may be subject to the land disposal process. As was described in Section 2.4, title to land identified as the CTA would not be transferred until a Conservation Agreement is developed on how the resources in this area would be protected and/or mitigated. The strategy committee would have input regarding the content and structure of the agreement.
- 3 The State Historic Preservation Officer (SHPO) reviewed the results of the Class III inventory (see Appendix F) and as was stated in Section 3.5.2.1 and Section 4.5, the SHPO concurred with the determinations made by the BLM regarding eligibility of sites for the National Register of Historic Places. Due to the sensitivity of information, specific requests to further review documents should be addressed to the BLM under separate letter.

Native American Consultation: We request clarification on the Native American consultation process.

- Section 3.6.3 states the 15 tribes listed in Table 3.6-3 were contacted regarding the land disposal action, but none of the tribes made any comments about culturally sensitive areas listed in the Draft EIS or any other sensitive areas. Appendix G of the Scoping Report shows a letter, which is presumably that sent to the 15 tribes. Were the follow up calls referenced in the letter successfully made? Did the Native American groups state they did not have any comments or did they simply not respond to efforts to contact them? Did they provide any reasons for not responding, such as perhaps needing time to meet among themselves before commenting or being busy during the time allotted for comment?
- Section 5.2.3 says letters were sent to representatives of 11 Native American tribes and bands of the Paiute Indian Tribe of Utah, and that these groups were invited to a meeting held in Parker, AZ. Please confirm that groups in Utah were not the only ones to receive the letter referenced here, and that other meetings took place besides the one in Parker, which is 170 miles away from Las Vegas.

Culturally Sensitive Areas Within the Disposal Boundary:

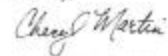
- Particular attention should be given to the conservation of areas such as the lands around the Las Vegas Wash. For more information about cultural resources near the wash, we recommend the article found on the Web at http://www.lvwash.org/important/history/hist_periods.html, entitled "Our History: People and the Wash."

Public Involvement:

- Both NHPA and NEPA laws stress the importance of public input.
- The ANS has been operating in the Las Vegas area since 1966. Agencies such as the National Park Service, the Bureau of Reclamation, the Department of Energy, the National Forest Service, and the Nevada SHPO have all contacted ANS for public input on or involvement in archaeological issues in southern Nevada. The Bureau of Land Management, whose disposal activities impact large numbers of archaeological sites in the Valley, has not contacted our organization for public input related to the disposal of any lands in the Las Vegas area, despite the fact that we have contacted BLM personnel in the past about the preservation of sites on BLM land.
- We would like the BLM to contact one of our board members by phone or mail whenever the agency is requesting public input regarding potential impacts to archaeological sites. Our contact information is attached in a separate document.

ANS supports the "Proposed Action and Conservation Alternatives" and would like to be involved in steering committee meetings charged with selecting lands for conservation.

Sincerely,



Cheryl Martin, President
Archaeo-Nevada Society

3930 El Camino Street Las Vegas, NV 89103

Comment O-2

- 4 As was stated in Section 3.6, an Ethnographic Assessment was completed and the results of this assessment were summarized in Section 3.6.3 and Section 4.6. The Ethnographic Assessment was completed in accordance with applicable regulations and executive orders. Responses to letters, results of meetings, and documentation of telephone conversations are all included in the Ethnographic Assessment. Due to the sensitivity of information, specific requests to further review documents should be addressed to the BLM under separate letter.
- 5 The sentence in Section 5.2.3 has been revised to clarify that the four bands of the Paiute tribe were included. See also Response 4 above.
- 6 Comment noted.
- 7 The public participation process was described in Chapter 4. Archaeo-Nevada Society has been added to the mailing list for this EIS.

TULE SPRINGS PRESERVATION COMMITTEE

61345 E. Carey Avenue
Las Vegas, Nevada 89156

November 8, 2004

BLM Land Disposal EIS
PBS&J
2270 Corporate Circle, Suite 100
Henderson, NV 89074

Re: Comments to the Las Vegas Valley Disposal Boundary DEIS, September 2004

1

Speaking for the Tule Springs Preservation Committee, I must state that we are opposed to the Proposed Action as presented Las Vegas Valley Disposal Boundary DEIS. The Proposed Action does not manage or preserve the few key resources that remain in the Las Vegas Valley but leaves them to the whim of developers and local governments. The specific resources with which we are most concerned are Cultural resources and Native America resources. However, the preservation of open space itself as a desirable and valuable resource is not adequately discussed. These, and all the resources described in the DEIS, contribute to the character of the Las Vegas Valley and therefore, influence our daily lives. For these reasons we feel the Proposed Action is unacceptable.

2

The DEIS indicates in Section 3 that the extreme northern tier of the Las Vegas Valley contains locations that contain significant examples of several resources not extant elsewhere in the Valley. This is particularly true of paleontological and, to a somewhat lesser extent, archaeological resources. The Conservation Transfer Alternative purports to preserve these resources by creation of a 5,000 acre special area, the title to which would not be transferred until a "Conservation Agreement is signed by all parties to the agreement". This document would require that the lands be managed consistent with the approved Conservation Agreement. Neither the DEIS nor the Staff at a public hearing, were able to describe how such a Conservation Agreement would be structured or what consequences could be attached to prevent participating agencies from reneging on the agreement. This is of concern to us because several of the agencies involved have extremely poor records of fulfilling preservation commitments.

3

Another area of our concern is that the DEIS, under all alternatives, leaves the future of the NRHP listed site 26CK244-248, and the other archaeological sites determined eligible for the NRHP which are located in the proposed disposal area to a "Historic Properties Treatment Plan" intended to address impacts from the as yet only vaguely defined Conservation Transfer Alternative. In essence, then, the DEIS provides no information about how these sites, and similarly, the numerous paleontological sites located in the

Comment O-3

Response O-3 (Tule Springs Preservation Committee)

1

Comment noted.

2

As was described in Section 2.4, title to land identified as the CTA would not be transferred until a Conservation Agreement is developed on how the resources in this area would be protected and/or mitigated. The strategy committee would have input regarding the content and structure of the agreement.

3

As was stated in Section 3.5.2.2, there are 660 acres of the Tule Springs National Register Site on BLM land, with the remaining acres on land owned by the State of Nevada. Only the portion of the Site that is on BLM land may be subject to the land disposal process. Also, as stated in Section 4.5.4, the BLM would prepare a Historic Properties Treatment Plan in consultation with the State Historic

Tule Springs Preservation Committee
DEIS Comments November 8, 2004
page 2

- 3 disposal area, will be treated. With out such information we must say that we find the Conservation Alternative deficient in these areas and therefore also unacceptable.

We would be more comfortable supporting the Conservation Transfer Alternative if the details of the Conservation Agreement were known, and agreed to, at least in principle, prior to finalization of the DEIS. We do not think that this alternative can be properly assessed without specific details.

- 4 Based on the information presented in the DEIS the No Action Alternative would be most desirable and clearly our preferred choice.

Sincerely,



Mark Rosenzweig, Ph.D.

Vice-President, Tule Springs Preservation Committee

Comment O-3

Preservation Officer that would govern the identification and application of mitigation measures for the Site at such time any of the lands are nominated for disposal. See Response 2 above.

- 4 Comment noted.



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Las Vegas Valley BLM Land Disposal EIS
PBS&J
2270 Corporate Circle, Suite 100
Henderson NV 89107-46362
Also emailed to lvtimeis@pbs.com on Nov 8th 2004
In reference to: NVO50 1792

November 8, 2004

Dear Sir/ Ma'am,

I participated in the stakeholders meeting on November 1st as a representative for the local group of the Sierra Club. I would like to add these formal comments to the official record in response to the draft EIS that was published this past September.

It is absolutely imperative under both the Endangered Species Act and Nevada state law that the two plants at risk in the Upper Las Vegas Wash be protected, and this clearly means protecting those plants where they now occur within the wash.

It is also clear that under the Clean Water Act that the wash itself must be maintained in some kind of natural and healthy condition.

It is also clear that there is a huge appreciation and wide-spread demand for protection for the paleontological resources that occur in the Upper Las Vegas Wash.

The CTA is inadequately described.

A 5,000 acre conservation transfer area is a very good alternative to evaluate. I am sure that a CTA could be designed that provides the protections that are needed, however there are gaping holes in the proposal. The draft EIS falls seriously short of necessary description and evaluation of the alternative when it fails to identify a manager for the proposed CTA.

It would seem that the biggest questions about the CTA would be what are its boundaries, who would manage it, and who would fund it. There are no answers for these huge questions at this time.

A CTA would isolate private development to the north of it.

To preserve the maximum amount of land for private development, the initial CTA boundary is drawn tightly around the Wash where the resources of concern occur. But this tight boundary isolates two large parcels of disposable land on the far side of the Wash. These large parcels would be privately developed, and the people there would need a full complement of infrastructure such as highways, roads, utilities, but they would be totally cut off from the rest of the Metro area. This would not be convenient or efficient for the people who live there and the services and access that they need, nor would it be healthy or protective for the Wash itself and the resources it contains. It would seem that the two parcels should be added to any CTA that may be proposed.

2 | A new alternative: add the CTA and the parcels north of it to the Refuge.

Comment O-4

Response O-4 (Sierra Club)

1 Comment noted. Title to land identified as the Conservation Transfer Area (CTA) would not be transferred until a Conservation Agreement is developed on how the resources in this area would be protected and/or mitigated. The strategy committee would have input regarding the content and structure of the agreement.

2 See General Response 2 – Range of Alternatives.

- 2 The outstanding questions about any CTA to be proposed are not small questions. Another alternative should also be looked at, an alternative that would return the area to Fish and Wildlife refuge status.

Clean Water Act and flood control is not adequately addressed.

The draft EIS does not consider the Clean Water Act or flood control adequately. It is important to maintain the integrity of not only the Las Vegas Wash, but also a number of the washes that feed into it. These feeder washes need to be identified. There also is an opportunity to manage the Upper Las Vegas Wash in concert with the Las Vegas Wash Wetlands. In other words, to manage the entire watershed as the one resource which of course it is. This opportunity needs to be fully explored.

- 3 I am very worried about how flood control design will take place regardless of where the land sales eventually occur. Channelized and concretized flood control structures do not build habitat and they do not build community. I personally have received many distraught phone calls from people in both North Las Vegas and Henderson who are losing their back yard washes to culverts and concrete. A strong case can be made for linear parks that maintain high-quality habitat, provide flood protection and recreation, enhance property values and create community. The best design for plants and animals can be the best design for people as well. It is good to know that the Flood Control District has said that it prefers that this area be kept natural, although I am uncomfortable because there is no mechanism that would require this to happen outside of their good intentions.

Transition planning

- 4 Consideration needs to be given to transition planning and zoning. We need to protect the resources of concern in a conservation area, but we also need to plan well for transitioning from urban and suburban space to natural and wild space. Not only do we have a proposed CTA, but there is the Refuge and the Shooting Range to accommodate. The cities of Las Vegas and North Las Vegas have a wonderful opportunity to design something really creative and new for all of us.

An additional concern

The EIS makes a couple of ill-considered statements.

- 5 "Effects on desert tortoises within the Las Vegas Valley represent a small impact to the Mojave population when total ... numbers and ... extent are considered." Para ES.3.4. This is blatantly untrue. The impacts to the desert tortoise in the Las Vegas Valley are such that the desert tortoise will have been completely exterminated on 144,000 acres of habitat, and this is enough to require mitigation actions to the tune of over \$11,000,000 a year. Eleven million dollars worth of impact is just not a small impact.

- 6 Under Mitigation Measures in para 4.4.4, the EIS gives an extensive description of how NDF would require builders to transplant, collect seed and stockpile soil - for the bear poppy!!! Incredible! This kind of statement really calls into question the competence of the people who wrote this document. Such activity is totally useless for the bear poppy; it has never been successfully done.

A catalogue of other concerns

- 7 How do we avoid habitat fragmentation with all the rights of way, roads, utilities, etc., etc?
How do we prepare residents to be good neighbors to a wild and natural area? Eg., kit foxes in their back yard?
What birds are present in the Wash? In particular, are there burrowing owls or owl habitat?

Comment O-4

- 3 As was stated in Section 3.3.1.1, the Clark County Regional Flood Control District (CCRFC) is responsible for developing and implementing a comprehensive flood control master plan which serves as a planning tool for the implementation of the flood control system in the Valley and the design and construction of master plan facilities. Impacts to floodplains and biological resources potentially resulting from the construction and operation of these flood control facilities were addressed in the Flood Control Master Plan Supplemental EIS recently completed by the CCRFC. A reference to the CCRFC Supplemental EIS was added to Section 3.3.1.1.

- 4 Comment noted.

- 5 The USFWS concluded in their biological opinion (File no. 1-5-96-F-23R.2) to the BLM that "the proposed disposal of up to 125,000 acres of BLM lands consisting of 121,000 acres of suitable and 4,000 acres of previously disturbed, no longer suitable, desert tortoise habitat would represent a loss of approximately four percent of the 4,900 square miles of desert tortoise habitat estimated to occur in Clark County. Effects on desert tortoises within the Las Vegas Valley represent a small impact to the Mojave population of the desert tortoise when total desert tortoise population numbers and geographical extent are considered."

- 6 As was stated in Section 4.4.1, the sensitivity and limited success of transplanting or reestablishing the Las Vegas bearpoppy was acknowledged. Also as was stated in Section 4.4.4, the mitigation measures of stockpiling of soil, seed bank collection for the Las Vegas bearpoppy are conditions set forth by the NDF "Master Permit" issued in 2001 to Clark County in conjunction with MSHCP. Under the

7

When would visitor facilities in the CTA be planned?
 Can we include walking trails and other low-impact recreation within the CTA?
 Will the CTA need a boundary marker/fence to control access?
 How many city/county/regional plans need to be changed because of a CTA?
 How would the Refuge management plan have to be changed because of development along its boundary?
 How do we incorporate a CTA into the Northwest Open Space Plan?
 What are the natural resources that are on the Shooting Range and on adjacent state lands?

Do not hurry this EIS process.

8

Answering any of these questions is a large undertaking and should not be approached hastily or lightly. Hurrying the EIS to be able to go forward with a land sale this February is folly.

Land sales could be offered in areas of the disposal boundary that are not contentious, but the Upper Wash and the northern boundary and the penstemon area in the south need to be very carefully worked out before going forward with actions that are irrevocable.

Sincerely,


 Jane Feldman
 Conservation Chair
 Southern Nevada Group of the Sierra Club
 PO Box 19777
 Las Vegas NV 89132

Comment O-4

6 (cont.) statutes that protect the bearpoppy, the State Forester Firewarden establishes permit conditions. In phone conversations with the NDF Forester, these conditions are the current measures available to protect, control, and monitor the species.

7 Some of the questions refer to topics outside the scope of this analysis. Section 3.4.2.1, Table 3.4-2, and Appendix B provides information on bird species, wildlife, and habitat. Development and management of the CTA will be an ongoing effort among the BLM, local governments, and interested parties as members of the strategy committee. Specific details are not available and will not be formulated as part of the EIS process.

8 See General Response 1 – Parcel Nomination and Sale Rate.

From: Micki Jay (micki_jay_2000@yahoo.com)
 Sent: Monday, November 08, 2004 3:40 PM
 To: lvbma@pbsj.com
 Subject: Re: Conservation transfer alternative of the NWLV area

Hello,

I am writing to you on behalf of the Northwest Las Vegas Equestrian Safety Coalition, a recently formed group of many residents that live, ride or otherwise have interest in maintaining the integrity of the NW area. We have become activists due to the current developing situation in the northwest and our enthusiasm and belief in preserving the environment is of paramount importance now.

1 We are extremely supportive of the conservation transfer area alternative of the the 8000 acres of land in the Northwest that had been slated for public auction on February 2nd and express our interest in the LV Valley BLM Land Disposal E.I.S.

2 Now that two varieties of endangered plants have been identified in these undeveloped sections of the northwest desert, as well as paleontological fossils that hold clues to how life was lived in the Mojave Desert during the Ice Age, we are asking that all parties sign a conservation agreement to protect these and other sensitive resources in our area.

3 Presently, the U.S. Fish and Wildlife Service moved to conserve the land as well as environmental protection specialists in the Las Vegas office of the Bureau of Land Management. We even believe that a larger buffer zone would even be in order to protect the fossils and yet undiscovered irreplaceable relics and vegetation due to erosion and wind/rain damage.

4 The protection of the rare plants are a priority to our future generations. Conservation of the Las Vegas wash corridor, maintaining the arroyo's in their natural state, allowing the remaining animals that live in the desert to enjoy their homeland and keeping this area in the same rich natural condition as we find it is of paramount importance.

5 The common landscape is rural, providing an excellent opportunity for equestrian use as well as multi-use trail development. Floyd Lamb Park could provide a good trail head location for non-motorized passive recreation.

The city fund is booming. Development is rampant. We ask that this area be left alone.

Thank you so much for taking the time to hear us.

Micki Jay
 Founder
 NWLV Equestrian Safety Coalition
 5700 Paseo Montana
 Las Vegas, NV 89108
 839-0624

Best wishes from Las Vegas, Nevada. Micki Jay

Comment O-5

Response O-5 (Northwest Las Vegas Equestrian Safety Coalition)

1 The Conservation Transfer Area (CTA) is approximately 5,000 acres. The BLM, USFWS, and City of North Las Vegas are collaboratively addressing measures to minimize and mitigate impacts to sensitive plant species outside and adjacent to the CTA that precludes the need to expand the CTA at this time.

2 The Las Vegas bearpoppy is a State of Nevada Critically Endangered Species, whereas the Las Vegas buckwheat is being evaluated by the Nevada Division of Forestry for listing as such. Neither of these species is federally listed as threatened or endangered.

As was described in Section 2.4, title to land identified as the CTA would not be transferred until a Conservation Agreement is developed on how the resources in this area would be protected and/or mitigated. The strategy committee would have input regarding the content and structure of the agreement.

3 Comment noted.

4 Comment noted.

5 Comment noted.

3

1 NORTH LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 20, 2004

2

3 TERRI ROBERTSON
Tule Springs Preservation Committee
4 6135 East Carey Avenue
Las Vegas, Nevada 89156
5

6 MS. ROBERTSON: My name is Terry Robertson, and I am with
7 the Tule Springs Preservation Committee.

8 Could you put that up to show that piece of property
9 again?

10 For 20 years, we have been basically working on this
11 issue, the last eight really working on it, trying to protect
12 this area. Inside that rectangle that you see, there are about
13 320 acres that actually belong to the state, so the total area
14 I believe that is registered is 980 acres. The first land
15 disposal lines had a small portion of it in it. So we began
16 having meetings with BLM telling them the importance of this
17 site. We had a reunion of the science team that was involved
18 in the dig in the '60s to get the community to know about the
19 site and interested about this site. It is known worldwide as
20 an Early Man Site. One of the most important paleo sites in
21 the world, and our community just doesn't know about it.

22 And what we were hoping to have happen is for BLM to
23 use some of the SNPLMA fund to do some preservation work out
24 there. Shadow Ridge High School right now, because of a
25 \$3 million grant from the National Science Foundation to

PRATT AND ASSOCIATES - (702) 568-4071

Comment O-6

**Response O-6
Committee)****(Tule Springs Preservation**

- 1 The distribution of proceeds from the land sales is specified by the Southern Nevada Public Land Management Act (SNPLMA). The types of expenditures and the process for nominating and funding projects are described on the SNPLMA web site at:
<http://www.nv.blm.gov/snplma/projectsdefault.asp>

4

1 Dr. Paul Buck and Dr. Steve Roland, they have a -- they use
 2 throughout their curriculum for their instruction the science
 3 data and information from the early studies. This is a prime,
 4 wonderful area that we need to preserve. There should not be
 5 any doubt in anybody's mind that any of that should even be
 6 done with what you call, that little sentence that you say
 7 "transfer of lands with conservation". Something. I forget
 8 what the sentence was, but that when you would talk about
 9 transferring lands that were -- that had some concerns that
 10 there would be a conservation --

11 MARY PETERS: Conservation agreement.

12 MRS. ROBERTSON: Conservation agreement. That is totally
 2 13 out of line. That land needs to be protected. The entire
 14 acreage needs to be protected. Why it still keeps getting
 15 further and further and further into the land disposal, I don't
 16 know, but --

17 And I would also -- I wasn't -- I'm sorry I was late.
 18 I didn't get to hear your entire speech. Hidden Valley, that's
 19 now within the land disposal line in the southern part? That
 20 is now, Oh, great.

21 Okay, that's it.

22 //

23

24

25

PRAIT AND ASSOCIATES - (702) 568-4071

Comment O-6

- 2 As was described in Section 2.4, title to land identified as the CTA, which includes a portion of the Tule Springs National Register Site, would not be transferred until a Conservation Agreement is developed on how the resources in this area would be protected and/or mitigated. The strategy committee would have input regarding the content and structure of the agreement.

As was stated in Section 3.5.2.2, there are 660 acres of the Tule Springs National Register Site on BLM land, with the remaining acres on land owned by the State of Nevada. Only the portion of the Site that is on BLM land may be subject to the land disposal process. Also, as stated in Section 4.5.4, the BLM would prepare a Historic Properties Treatment Plan in consultation with the State Historic Preservation Officer that would govern the identification and application of mitigation measures for the Site at such time any of the lands are nominated for disposal.



THE NATURE CONSERVANCY OF NEVADA
 Northern Nevada Office Southern Nevada Office
 One East First Street, #1007 3380 West Sahara Avenue, #120
 Reno, NV 89501 Las Vegas, NV 89102
 Tel 775-322-4090 Tel 702-731-4744
 Fax 775-322-5132 Fax 702-737-5787

November 16, 2004

Las Vegas Valley BLM Land Disposal EIS
 PBS&J
 2270 Corporate Circle, Suite 100
 Henderson, Nevada 89074-6382

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The Nevada chapter of The Nature Conservancy appreciates the opportunity to offer comments on the proposed Las Vegas Valley Disposal Boundary Draft Environmental Impact Statement. The mission of The Nature Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on earth by protecting the lands and waters they need to survive. As an international conservation organization committed to biodiversity protection at local and global scales, we have long been concerned with the effects of urbanization on native species, natural communities and ecological systems. In southern Nevada, we are particularly concerned with the short and long-term effects of urbanization in the Las Vegas Valley on these resources. However, as Nevadans, we also recognize the need to ensure both a thriving economy and high-standard quality of life for our urban residents.

Our vision in Nevada is to ensure the long-term survival of all viable native species, natural communities, and ecological systems through the design and conservation of functional conservation areas. To achieve this vision, we recently completed conservation assessments of the Great Basin and Mojave Desert – two of the most biologically diverse and imperiled ecoregions in the United States. TNC's ecoregional assessment, *Ecoregion-Based Conservation in the Mojave Desert*, dated August 2001, considered all of southern Nevada, and identified areas in the Mojave Desert fully representing the ecological systems, natural communities, and specific characteristics of this ecoregion.

Prior to the population boom of the last few decades in southern Nevada, portions of the Las Vegas Valley were relatively pristine and offered classic examples of typical Mojave Desert communities such as creosote bush scrub, desert saltbush scrub, and Mojave wash scrub. Today, undisturbed remnants of these communities still exist in the northern Las Vegas Valley, although hopscotch development and human encroachment from unregulated use of the desert landscape is rapidly eroding habitat quality. Regardless, the disposal area contains many relatively undisturbed areas of high quality habitat. Of particular interest to us are the remnant communities of catclaw acacia, honey mesquite, and desert willow that provide habitat for a diversity of bird, mammal, and reptile species; the gypsum substrates and badland hills that support small pockets of Las Vegas bearpoppy (*Arctostaphylos californica*); and the areas of desert scrub vegetation harboring

Comment O-7

Response O-7 (The Nature Conservancy)

November 16, 2004
Las Vegas Valley BLM Land Disposal EIS

occurrences of two-tone penstemon (*Penstemon bicolor*) and Las Vegas buckwheat (*Eriogonum corymbosum* var. *nilesii* ined.). These three plant species – Las Vegas bearpoppy, Las Vegas buckwheat, and two-toned beardtongue – are all globally rare, with their geographic distributions centered in southern Nevada.

We are particularly concerned with the status of the Las Vegas buckwheat. As currently understood, this species was once more widespread in southern Nevada, but is now limited to small populations in just a few areas. Based on very recent information (postdating publication of the draft EIS), the population in the disposal boundary area is now estimated to consist of approximately 900 healthy individuals of different size classes and ages, and is by far the largest population of this species known today, while the other populations (one on Nellis Air Force Base, and two on public lands in the Muddy Mountains and Gold Butte areas of eastern Clark County) are either limited in numbers or are of marginal population health.

We believe that a portion of the northern Las Vegas Valley area currently being considered for disposal by the BLM supports an element of the Mojave Desert's biological diversity worth protecting – that is, the largest remaining population of the Las Vegas buckwheat in existence today. Accordingly, based on our review of the alternatives presented in the draft EIS, we recommend that the BLM consider selection of a modified Conservation Transfer Alternative.

As described in the EIS, under the conservation transfer alternative, BLM would continue to dispose of the 46,700 acres of lands available for transfer or sale within the disposal boundary, with the exception of approximately 5,000 acres of bearpoppy and buckwheat habitat in this vicinity. This area would be restricted as to the type of future development that could occur without impacting natural resources. This alternative was designed to protect sensitive biological resources including the bearpoppy and buckwheat, while also continuing to allow issuance of rights of way and Recreation and Public Purposes Act leases on these lands, where avoidance or adequate mitigation of plant habitat could be achieved. However, given the recent discovery of approximately 700 individual Las Vegas buckwheat plants in an area located southeast of the currently delineated conservation transfer area, we recommend that the transfer area alternative be expanded to include these newly discovered individuals, with an appropriate buffer to protect from local disturbance and to accommodate some plant population growth in the future.

Finally, as requested by BLM during the November 1, 2004 meeting about this project, we would like to comment on how the conservation transfer area could most effectively be managed to protect resource values. Clearly, in the past few decades, the resource management agencies in Clark County have been greatly challenged by the rapidly increasing urban population and its concomitant demand for recreational opportunity. The adverse effects of dispersed, unregulated recreational use of the public lands are particularly severe at the urban-rural interface where OHV incursions and dumping of household wastes in natural areas have become increasingly commonplace.

- 1 Potential impacts to sensitive resources outside the Conservation Transfer Area (CTA) were described in Chapter 4 under the Proposed Action. Specific mitigation to minimize impacts to sensitive resources (primarily the Las Vegas buckwheat and Las Vegas bearpoppy) outside the CTA is being addressed collaboratively by the BLM, USFWS, and the City of North Las Vegas. Mitigation measures will be identified and implemented prior to certain lands being offered for sale.
- 2 Comment noted. As was stated in Section 2.4, title to land identified as the CTA would not be transferred until a Conservation Agreement is developed on how the resources in this area would be protected and/or mitigated. The strategy committee would have input regarding the content and structure of the agreement. The BLM appreciates your input.

November 16, 2004
Las Vegas Valley BLM Land Disposal EIS

2 We recognize that demand for outdoor activity is rapidly increasing over time, that urban residents are in need of quality recreational opportunities, and believe that this need could be accommodated through development of a suite of open space areas managed for various types and intensities of appropriately placed public use. While the conservation transfer area should not be regarded as a recreational area in the traditional sense of the word, its proximity to developed areas will make it subject to frequent public access. Consequently, the suite of biological and paleontological resources present in the area will require intensive, on-the-ground management to ensure their long-term protection. Section 4.4.3 of the EIS refers to future management of this area as "open space with limited and compatible recreation development for trails and interpretive activities." We agree that such activities within the conservation transfer area would be appropriate, with proper management, and would enhance opportunities for the local residents to learn about and enjoy the special natural resources of their area. However, management of this area sufficient to maintain a viable population of the Las Vegas buckwheat into the foreseeable future must be intensive, and thus will be costly. The parks, trails, and natural areas component of the special account established under the Southern Nevada Public Lands Management Act could easily support such an expenditure that would be precisely in keeping within the spirit and intent of the Act.

3 In conclusion, we view the newly discovered significant habitat for rare species within the disposal boundary as an important test of the purpose and potential strength of the special account established under SNPLMA to provide a win-win situation. With resources needed to effectively manage light use in a conservation transfer area aimed at long term viability of Las Vegas buckwheat, North Las Vegas obtains land needed for future growth and retains important natural values that contribute to aesthetic reasons for why people want to live there.

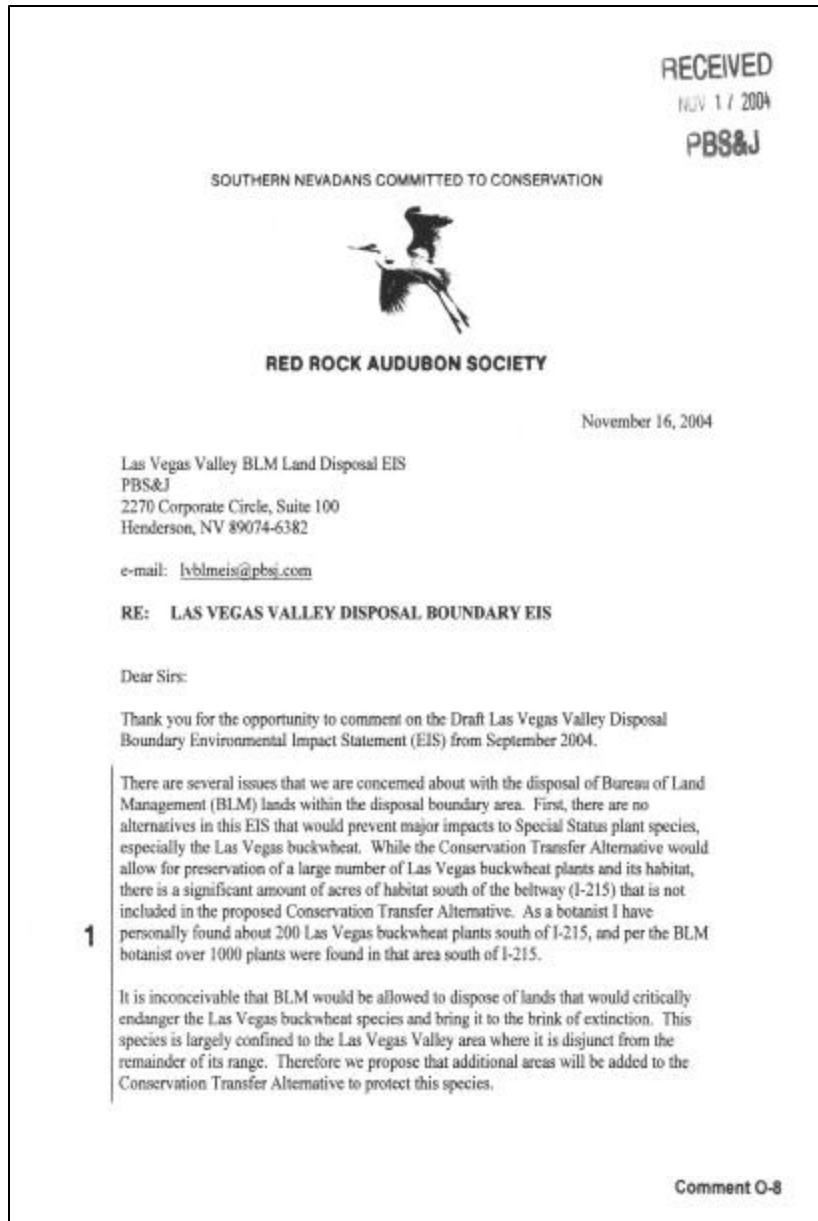
Thank you for the opportunity to comment on the EIS. The Nature Conservancy of Nevada is interested and stands ready to provide technical assistance to the BLM and the City of North Las Vegas in designing, and as appropriate, managing a conservation reserve for the Las Vegas buckwheat in northern Las Vegas Valley. Please do not hesitate to contact me at 775-322-4990, extension 28, if we can be of assistance in shaping the final conservation alternative for the land disposal.

Sincerely,



Janet Bair
Director of Conservation Programs

3 The distribution of proceeds from the land sales is specified by the Southern Nevada Public Land Management Act (SNPLMA). The types of expenditures and the process for nominating and funding projects are described on the SNPLMA web site at:
<http://www.nv.blm.gov/snplma/projectsdefault.asp>



Response O-8 (Red Rock Audubon Society)

- 1 Specific mitigation to minimize impacts to sensitive resources outside the Conservation Transfer Area is being addressed collaboratively by the BLM, USFWS, and the City of North Las Vegas.

Page 2 (RRAS)

2

In Chapter 3 of the EIS, Section 3.4.1.1, Wetlands and Riparian Communities: *Arundo donax* (giant reed) is listed as a common riparian vegetation component. *Arundo donax* is a noxious weed that is problematic in many riparian communities by displacing native vegetation and the EIS should acknowledge that fact.

3

We commend the BLM for inventorying acacia/mesquite habitats. The Red Rock Audubon Society is concerned about decreasing numbers of Phainopepla and its habitat in the valley. Figure 3.4-3 shows major areas of acacia/mesquite habitat in the north-eastern portion of the disposal area. The proposed Conservation Transfer Alternative would certainly preserve some of that habitat for the Phainopepla.

We would gladly assist in future discussions about these problems mentioned above and find alternatives to protect the resources in a compatible way.

Sincerely,

Armando D. Diaz 

Past-President Red Rock Audubon Society
P.O. Box 96691
Las Vegas, NV 89193

Comment O-8

- 2 The species is not currently listed on the Nevada Noxious Weeds list. Per Dawn Rafferty, Noxious Weed Program Coordinator for the Nevada Department of Agriculture, the species will most likely be listed as noxious in 2005.
- 3 Comment noted.

Response O-9 (Nevada Environmental Coalition, Inc.)

1 ROBERT W. HALL, Pro Se
2 10720 Button Willow Drive
3 Las Vegas, Nevada 89134
4 (702) 360-3118
5 FAX: (702) 360-3119

6 U.S. DEPARTMENT OF THE INTERIOR
7 BUREAU OF LAND MANAGEMENT

8 In the Matter of

9 NEVADA ENVIRONMENTAL COALITION INC.
10 and ROBERT W. HALL Comments re:
11 Las Vegas Valley Disposal Boundary Draft Environmental
12 Impact Statement (DEIS) NV-050-1792, 69 Fed. Reg. 54778,
13 dated September 10, 2004

14 COMMENTS OF THE NEVADA ENVIRONMENTAL COALITION, INC.
15 and ROBERT W. HALL

16 **Preliminary Statement**

17 The following comments by Robert W. Hall, President, Nevada Environmental Coalition,
18 Inc. ("NEC") and Robert W. Hall as an individual are timely submitted in response to the Bureau
19 of Land Management's September 10, 2004 Federal Register ("FR") notice inviting the general
20 public and interested parties to comment on the Las Vegas Valley Disposal Boundary Draft
21 Environmental Impact Statement (DEIS), Clark County, Nevada.

22 The Nevada Environmental Coalition, Inc. ("NEC") is a research and advocacy public
23 service and oversight organization that regarding Clark County environmental issues. NEC's
24 supporting organizations and NEC associates live, work, pay taxes, breathe the air and drink the
25 water in Clark County Nevada where the NEC is located.

26 SOUTHERN NEVADA PUBLIC LAND MANAGEMENT ACT OF 1998 (SNPLMA) AS
27 AMENDED BY THE CLARK COUNTY CONSERVATION OF PUBLIC LAND AND
NATURAL RESOURCES ACT OF 2002 (CCCPLNRA)

NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 1

Comment O-9

1

There is nothing in the SNPLMA or the CCCPLNRA that sets aside the Bureau of Land Management's (BLM's) requirements to comply fully with the National Environmental Policy Act (NEPA), the Clean Air Act (CAA) or the Administrative Procedures Act (APA). The BLM has not complied with all three acts since NEPA and CAA were signed into law in 1970. To this date, there is no NEPA compliant, site specific environmental impact statement subject to APA review that reveals to other local, state and federal agencies and the public how much direct and indirect air pollution the BLM is responsible for in the Las Vegas Valley serious non-attainment areas for particle matter ten microns or less (PM10), carbon monoxide (CO) and ozone (CO3). By "subject to APA review" we are specifically making the distinction between site specific documents that are subject to APA review as opposed to long range planning, programmatic documents that are not subject to APA review. The difference involves public review and scrutiny by just comment documents.

STATE OF NEVADA/CLARK COUNTY POLLUTION SPECIFIC STATE IMPLEMENTATION PLANS

2

For the reasons given above, we do not believe that the SNPLMA (52,000 acres) and CCCPLNRA (22,000 acres) land disposals of 74,000 acres of land in the Las Vegas Valley are NEPA, CAA and APA lawful. NEPA and the CAA are concerned with serious non-attainment areas, not a BLM disposal area. The draft document is a NEPA DEIS. There is no citation to NEPA permitting the misleading introduction of a "disposal area" where the issues are the serious non-attainment areas. An EIS must refer to environmental law statutes or regulations not land disposal rules. The reason is that comparisons must be made with like data. The reader must have the information to be able to understand how the document relates to the serious non-attainment areas. There is no practical way to determine whether the level of air pollution predicted and reported exceeds the SIP standards or not. The public has a right pursuant to

NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 2

Comment O-9

1 The analysis is being performed in compliance with BLM's obligations under NEPA, as specified in CEQ and BLM regulations, including requirements for public participation in the NEPA process.

2 The Draft EIS includes a description of applicable laws in Section 1.4. Estimates of air emissions and comparison of the emission levels to simulated air quality conditions are provided in Section 4.1, including comparison of cumulative emissions to SIP threshold values, where available.

2	<p>1 NEPA to know what the environment consequences of their proposed actions are and whether 2 those consequences are permitted according to current law. The DEIS does not provide that 3 information.</p>
3	<p>4 ENVIRONMENTAL CONSEQUENCES</p> <p>5 Chapter 4 is a narrative that does not cite or directly relate to NEPA and CAA 6 requirements. There is no checklist of NEPA requirements or whether or not there is compliance. 7 "The direct and indirect impacts of the BLM lands sold since June 2004 were addressed in "other 8 National Environmental Policy Act (NEPA) documents." Id. 4-1, ¶ 2. What other documents? 9 "Implementation of land disposal and development actions within the disposal boundary area 10 (i.e., spatial) would occur over the remaining portion of the current 20-year planning period (i.e., 11 temporal), thus the analysis of impacts of the land disposal alternatives is cumulative in itself." 12 Id. 4-1, Types of Impacts, ¶ 4. What remaining portion of the current 20-year planning period? 13 What does that have to do with site specific actions?</p>
4	<p>14 The Table 4.0-1 at 4-3 Land Disposal predicts an annual disposal average of 4,000 acres 15 sold per year, with disposal to be complete by 2015. Land Development however is estimated at 16 only 1,330 acres developed per year through 2018. On November 12, 2004, the BLM noticed 17 4,320.82 acres of land for disposal at a planned February 2, 2005 land sale. The BLM has held 18 two land sales a year. Obviously the predications and assumptions are in substantial error. It is 19 true that once there is NEPA and CAA compliance there is no practical reasons why land 20 disposals could not increase substantially absent SNPLMA (52,000 acres) and CCCPLNRA 21 (22,000 acres) enforceable restrictions on annual land disposals.</p>
5	<p>22 The discussion of BLM's mitigation requirements admits that they would be limited to 23 the Endangered Species Act and National Historic Preservation Act. The rest of the mitigation 24</p>
	<p>NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 3</p> <p>Comment O-9</p>

3 Chapter 4 of the Draft EIS has been prepared to address the requirements of CEQ regulations for an EIS to disclose impacts of alternatives considered (40 CFR §1502.16). Other NEPA documents that evaluated impacts of previous land sales include the EIS prepared for the Resource Management Plan, which was adopted by the Las Vegas Field Office in 1998. This NEPA document provided a programmatic analysis of projected land disposal actions in the Las Vegas Valley based on information available at that time. Individual sales were evaluated for site-specific impacts and possible mitigation measures on a more detailed basis and were tiered to the RMP EIS. The Draft EIS has been prepared in response to the requirements of SNPLMA, as amended, and to address increased demand for land for development in the Las Vegas Valley because these factors are projected to result in greater land transfers than projected for the analysis in the RMP EIS.

4 The rates of land disposal are based on historical averages of land transfer by BLM in the Las Vegas Valley over the last several years. While the amount of land disposed in any given year may be above or below the average, the analysis of impacts provided in the EIS provides an assessment of impacts for the total amount of land projected to be sold and developed. Based on available information, BLM expects the average rate of disposal to be similar to the assumptions made for the analysis in the Draft EIS even though the rate of disposal in any single year may be above or below the projected average rate of disposal. Sections 2.2 through 2.5 explain that the projected disposal rate is based on averages of sales since the 1998 RMP.

The analysis of impacts in the Draft EIS is based on the average rate of development, not average rate of disposal. As stated in Section 4.9, development rates were based on developed uses of BLM lands that were disposed of under SNPLMA from 1999 to 2000, and on planned development

5	<p>discussion is speculative at best. Id. 4-4. The DEIS admits that the "final revised ozone results from the air quality model are unavailable for this Draft EIS but will be incorporate in the Final EIS." Where an important section of non-attainment air pollution is admittedly not included, the DEIS must be re-noticed for public comment when the rest of the information is available. Id. 4-4.</p>
6	<p>4.1 Air Quality. The section admits that direct air quality impacts from "the issuance of ROWs and R&PP leases 'may' occur." The development of these lands will cause direct and indirect air pollution.</p> <p>"Land disposal actions are not subject to conformity with existing State Implementation Plans (SIPs) because land disposal does not create or increase sources of pollutants or emission rates (40 CFR 93.153(c)(2)(xiv)). Federal agencies are not responsible for ensuring conformity for any activities that occur subsequent to transfer of lands to non-federal entities." That statement is misleading.</p> <p>ENVIRONMENTAL LAW</p> <p>A. NEPA</p> <p>(a) ... Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101. ... (b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA... (Emphasis added.)</p>
7	<p>40 CFR § 1500.1 (7-1-02). To the extent that environmental information is not available to citizens before decisions are made and before actions are taken, BLM's information does not involve accurate scientific analysis, expert agency comments and public scrutiny. Any contrary decision by the BLM errs and abuses its discretion.</p> <p>NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 4</p> <p>Comment O-9</p>

4(cont) land use categories used by the Regional Transportation Commission.

5 The mitigation measures noted in the EIS are based upon the best information available regarding disposal actions where no specific development plan for any parcel is known. Ozone results have been incorporated into the final EIS.

6 The impacts of issuing rights-of-way and R&PP leases are evaluated in the EIS because BLM retains ownership of the land under these realty actions and must approve proposed activities on these lands. The BLM approval of activities on leased lands and rights-of-way is a federal action as defined by NEPA. Land disposal actions that result in transfer of title and do not constitute federal authorization of development or other activities are exempt from conformity requirements (40 CFR §93.153(c)(2)(xiv)). This rule states explicitly that: "Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer" are exempt from conformity requirements.

7 The supporting analyses conducted for the Draft EIS, such as the Air Quality Study performed by Argonne National Laboratory, have been prepared using the best available information and the best professional judgment of technically qualified specialists in each area. The level of effort and technical standards met the requirements for use of available information specified in 40 CFR §1502.24.

8	<p>1 The outstanding issues start with the NEPA non-discretionary requirements the BLM has 2 failed and refused to accomplish. Each failure to comply is a separate justification for a failed 3 SIP.</p>
9	<p>4 BLM has passed the acreage from the Southern Nevada Public Land Management Act 5 ("SNPLMA") and the Clark County Conservation of Public Land and Natural Resources Act of 6 2002 ("CCPLNRA") into smaller land disposal actions supported by a low level environmental 7 assessments ("EAs") in order to evade subjecting the entire 74,000 acres of the two Acts to an 8 environmental impact statement ("EIS"), major federal action review. We now have a DEIS that 9 is looking back despite the fact that substantial lands have already been sold.</p>
10	<p>11 BLM has published a Federal Register Notice of Realty Action ("NORA") that is dated 12 October 1, 2004 and was noticed November 12, 2004 announcing a February 2, 2005 land 13 disposal sale. There is no final, NEPA compliant, site specific EIS covering this land sale. The 14 first notice the public had admits there is no final EIS, just the September 10, 2004 DEIS. There 15 was no final NEPA EIS compliance ensuring that finally approved environmental information 16 was available to citizens before the BLM's decisions were made and before the NORA actions 17 were taken. The land disposal sale was noticed to the public without NEPA compliance. 40 CFR 18 § 1500.1(b) (7-1-02).</p>
11	<p>19 BLM's claim of conformance to a state implementation plan ("SIP"). EPA has recently, 20 preliminarily approved two SIPs. The PM10 SIP approval was noticed on June 9, 2004 (69 Fed. 21 Reg. 32,273). The CO SIP approval was noticed on September 21, 2004 (69 Fed. Reg. 56,351) 22 (codified at 40 C.F.R. Part 52.) There is some dissonance however, between EPA rules and Ninth 23 Circuit Court of Appeals rules. The EPA's effective date is thirty days after FR publication. The 24 Ninth Circuit Court of Appeals however, allows notices of appeal up to sixty-days after FR 25 publication. The PM10 approval was noticed for judicial review by Petitioner Hall and is now in 26 the briefing stage. The CO SIP request for judicial review has not tolled and will be filed this 27 week. As a result nothing is final yet.</p>
NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 5	
Comment O-9	

- 8 The BLM is required to comply with NEPA in completing the EIS. The SIP is implemented by the Clark County Division of Air Quality and Environmental Management and its implementation is not within the authority of the BLM.
- 9 Land disposal actions in the Las Vegas Valley had been initiated by BLM as part of the implementation of management decisions documented in the Las Vegas RMP. The overall impacts of projected land disposal that were anticipated at the time of the RMP preparation were evaluated in its accompanying EIS. Under the RMP, tiered NEPA analyses of individual sales have been performed to ensure NEPA compliance of each sale. The disposal boundary area was modified by the Clark County Act and increased nomination of parcels for sale by local governments have resulted in land disposal rates that exceed the projections used in the RMP. In response to these changes from the projections used for impact analysis in the RMP, the BLM is completing this NEPA analysis for ongoing land sales. Previous sales are included in this analysis to meet the requirements of NEPA to assess cumulative impacts.
- 10 While the BLM anticipated that completion of the EIS would allow the February 2005 sale to proceed, the schedule or scope of the offering can be modified in response to determinations in the EIS and Record of Decision.
- 11 Comment noted. Judicial review of the SIP documents does not affect the impact analysis and preparation of this EIS.

12	<p>In 1999 Clark County and the State of Nevada filed a PM10 SIP submittal with the EPA. The Ninth Circuit Court of Appeals vacated and remanded the approval in 2001. For that reason, no one can be certain whether there is a finally approved SIP or not. The legal effect of a court vacating and remanding the approval goes back to the date of approval which legally no longer exists.</p>
13	<p>Prior to the latest SIP submittals, there was no EPA finally approved Clark County SIP that meets the 1990 amendments to the Clean Air Act ("CAA"). See, 42 U.S.C. § 7506(c). There is considerable risk to moving ahead without a final EIS which should have preceded the FONSI. There is more legal risk in proceeding without finally approved pollution specific SIPs.</p> <p>NEPA requires impact statements to consider alternatives to the proposed action other than the proposed, single no action alternative. See 42 U.S.C. § 4332(2)(C)(iii). The required statement is not in the AR. The alternative of slowing the land sales down or canceling them outright as a result of the current drought of a thousand years. Dust mitigation in the Las Vegas Valley relies upon water and there is no water for dust control.</p>
14	<p>NEPA requires that the responsible Federal official, shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies which are authorized to develop and enforce environmental standards, shall be made available to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review procedures.</p>
15	<p>The required compliance was not made public pursuant to 5 U.S.C. § 552 and there is no legally sufficient evidence to the contrary Web site. The BLM is moving ahead without lawful authority.</p> <p>The Southern Nevada Public Land Management Act ("SNPLMA") and the subsequent statute, the Clark County Conservation of Public Land and Natural Resources Act of 2002</p>
<p>NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 6</p> <p>Comment O-9</p>	

- 12** The land disposal process does not include responsibility for or jurisdiction over implementation of SIP controls and is not impacted by the SIP approval process. The BLM uses data from the SIP to complete its NEPA analysis because the data is the best available.
- 13** See General Response 2 – Range of Alternatives. The alternatives development process, including alternatives considered and eliminated from the analysis, are described in Chapter 2.
- 14** The EIS is being prepared following the consultation and public participation requirements of NEPA. The EIS is not a rulemaking or adjudication process or order, which are the types of agency actions subject to the statute cited in the comment.
- 15** The EIS for the land disposal actions in the Las Vegas Valley is being prepared to consider the impacts of land sales beyond those projected in the RMP and its accompanying EIS. Impacts related to previous sale actions are included as part of the cumulative impact analysis.

15

1 ("CCPLNRA") do not supersede NEPA. Both of these Acts combined require that the BLM
 2 dispose of 74,000 acres of government land in the Las Vegas Valley. That duty has nothing to do
 3 with the duty to comply with NEPA, CAA and APA requirements. The land disposal Acts are
 4 major federal environmental actions that must comply with NEPA before any FONSI. The BLM
 5 takes a legal risk when it ignores the NEPA requirement to disclose cumulative air pollution
 6 impacts before the sale, "before decisions are made and before actions are taken." 40 C.F.R. §
 7 1500.1(b). The reference to "local land use plans" is a diversion that is not relevant herein. This
 8 is primarily a NEPA action and there is no exemption from NEPA.

10 THE CLAIMED EXEMPTION

11 "A federal regulation in conflict with a federal statute is invalid as a matter of law."
 12 *Watson v. Proctor* (In re *Watson*), 161 F.3d 593, 598 (9th Cir. 1998) (citing *Chem. Mfrs. Ass'n v.*
 13 *Natural Res. Defense Council, Inc.*, 470 U.S. 116, 126 (1985) (emphasis in the original).
 14 Consequently, the Supreme Court has held that an agency's interpretation of a regulation that
 15 conflicts with the plain language of the statute is entitled to "no deference." *Public Employees*
 16 *Ret. Sys. v. Betts*, 492 U.S. 158, 171 (1989). The BLM does not read the EPA regulation, NEPA
 17 or the CAA to preserve their validity. In the present instance, the EPA regulations must be read
 18 narrowly to that the claimed exemption applies only to transportation law and then only to the
 19 extent that the direct and indirect air pollution from the agency action is in fact de minimis
 20 according to the modifying language in the regulation.

21 Petitioner argued that *Hall v. Norton*, 266 F.3d 969 (9th Cir. 2001), an appeals court
 22 decision that resulted in a remand to the district court in favor of Hall, discussed 40 C.F.R. §
 23 93.153(c)(2)(xiv). That discussion and the regulation cited are restricted to transportation plans,
 24 programs and projects developed, funded or approved under Title 23 U.S.C. or the Urban Mass
 25

NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 7

Comment O-9

16 Under the EPA rules defining the applicability of conformity requirements, 40 CFR §153(a) states that transportation projects must comply with conformity requirements as specified in 40 CFR 51, Subpart T. 40 CFR 153(b) states that the conformity requirements of that subpart apply to federal actions other than transportation projects, including the exclusions listed in 40 CFR §(153)(c)(2)(xiv).

Comment O-9

1 court noted, Hall's Clean Air Act challenge to the Del Webb land exchange fails if this
2 exemption is valid, so Hall's challenge necessarily must be considered as a challenge to the
3 validity of the exemption." The words "if this exemption is valid" are operative.

4 Hall does not challenge the actual language of the 40 C.F.R. § 93.153(c)(2)(xiv) or its
5 application to the execution or paper transfer of land as long as the regulation is read in the
6 context of the entire regulation, 40 C.F.R. § 93.100 *et. seq.* and is interpreted in accordance with
7 the entire sub-section.

8 The BLM is reading the narrow exemption out of the context to the entire sub-section.
9 Land transfers are paper transactions that are obviously exempt *as long as they are air pollution*
10 *de minimis and they remain air pollution de minimis.* The site specific actions that result from
11 BLM's land disposals and transfers are not *de minimis* and exempt by the language, spirit and
12 intent of the rest of 40 C.F.R. § 93.153. The BLM misleads when only a sliver of a complex
13 regulation is introduced.
14

15
16 The BLM's CAA "exemption" argument, if taken as lawful by an appeals court, would
17 have the effect of nullifying NEPA, CAA and APA by a back door parsing of the law. NEPA,
18 CAA and APA were enacted to work together. A finding that nullifies one statute has the
19 practical effect of nullifying all.

20
21 Petitioner Hall objects to the BLM's argument on factual and legal (including
22 jurisdiction) grounds. Neither the district court nor an appeals court has the jurisdiction to nullify
23 NEPA, CAA and APA. It should be intuitive that the BLM does not have lawful authority to
24 dump 74,000 acres of land intended for development in a small valley without NEPA, CAA and
25 APA consequences. Without compliance, the dust clouds follow.
26
27

NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 9

Comment O-9

1 This action does not involve transportation issues. See 40 C.F.R. § 51.853(c)(2)(xii). As
 2 the EPA has recognized, the possibility that a plan will itself result in degradation of air quality is
 3 so remote as to be de minimis. See 40 C.F.R. § 51.853(c)(2)(xii). See, *Hall v. Abbey*, 32 Fed.
 4 Appx. 920, 922 (9th Cir. 2002).

5 The "exemption" is very narrow and involves only "(xii) Planning, studies, and provision
 6 of technical assistance." For the exemption to apply, the entire sub-section must be read and all
 7 of the modifying language must be taken into consideration. "(c) The requirements of this
 8 subpart shall not apply to: ... (1) Actions would result in no emissions increase or an increase in
 9 emissions that is clearly *de minimis*" which is certainly the case in preparing a paper document.
 10 That section also defines *de minimis* as under 70 tons of PM10 per year and under 100 tons of
 11 CO per year. If and when the BLM produces a cumulative impact EIS we would see how many
 12 thousands of times the *de minimis* limit is exceeded. The disposal of 74,000 acres in a serious
 13 non-attainment area is not a *de minimis* action. The data that is available readily admits to more
 14 than 70 tpy of PM10 and 100 tpy of CO. See, 40 C.F.R. § 51.853 (7-1-01). The BLM notes that
 15 in practice the total acreage would not be developed, thus the actual emission totals may be
 16 smaller than estimated. Judging by the steady increase in the amount of acreage noticed for
 17 disposal, the reverse is true.

18 The BLM has requested environmental approval for a total of 74,000 acres, not less. That
 19 is the acreage they must deal with. They can lawfully dispose of all 74,000 acres at any time. The
 20 issue is not what the BLM may or may not do, the issue is 74,000 acres. BLM routinely prepares
 21 only EAs but they now admit that an additional 22,000 acres beyond the original 52,000 acres
 22 has triggered another EIS requirement. All of the acreage estimates constitute a major Federal
 23 action and all require an EIS.

24 No matter how thorough, an EA can never substitute for preparation of an EIS, if
 25 the proposed action could significantly affect the environment. See *Sierra Club v.*
 26 *Marsh*, 769 F.2d 868, 874-76 (1st Cir. 1985). We stress in this regard that an EIS
 27 serves different purposes from an EA. An EA simply assesses whether there will
 be a significant impact on the environment. An EIS weighs any significant
 negative impacts of the proposed action against the positive objectives of the

NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 10

Comment O-9

17 As stated in previous responses and as provided in the Purpose and Need discussion in Chapter 1, the EIS is being prepared to evaluate the impacts of land sales because changes in the disposal boundary implemented by the Clark County Act and increased nomination of parcels for sale by local governments, would result in land disposals beyond the amounts originally considered in the RMP/EIS. Individual sales conducted under the RMP have had tiered NEPA documentation prepared for each sale.

project. Preparation of an EIS thus ensures that decision-makers know that there is a risk of significant environmental impact and take that impact into consideration. As such, an EIS is more likely to attract the time and attention of both policymakers and the public. In addition, there is generally a longer time period for the public to comment on an EIS as opposed to an EA, and public hearings are often held....

See *Anderson v. Evans*, 350 F.3d 815, 836 (9th Cir. 2003).

Sec. 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

- (1) Have an adverse environmental impact, or
- (2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;
- (2) Is itself accompanied by an adequate environmental impact statement; and
- (3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.... (Emphasis added.)

The major federal action that is the issue is the disposal of 74,000 acres of land in both the SNPLMA and/or the CCPLNRA. There is no EIS that meets the test of 40 C.F.R. § 1506.1. Despite BLM's omissions, the program of the disposal of 74,000 acres continues unabated. Worse, the repeated use of the word "SIP" without the preceding words "preliminarily approved" is misleading. EPA approvals remain subject to APA review.

Without a finally approved SIP, the amount the BLM may increase air pollution in the Las Vegas Valley serious non-attainment area only by an amount determined by the EPA finally approved SIP budgets. See 42 U.S.C. § 7506(c). The BLM cannot conform to a state

18 Air quality impacts are evaluated in Chapter 4 of the EIS for each alternative, as required by the CEQ regulations cited that define major federal actions and significance.

NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 11

Comment O-9

1 implementation plan that does not yet finally exist. An EPA finally approved SIP sets limits
2 regarding the amount of air pollution sources including Federal agency sources may or may not
3 exceed. By BLM's own admissions and until there is an EPA finally approved SIP, the CAA is
4 clear that air pollution emissions beyond *de minimis* are unlawful.

5 Sec. 1508.18 Major Federal action.

6 Major Federal action includes actions with effects that may be major and which
7 are potentially subject to Federal control and responsibility. Major reinforces but
8 does not have a meaning independent of significantly (Sec. 1508.27). Actions
9 include the circumstance where the responsible officials fail to act and that failure
10 to act is reviewable by courts or administrative tribunals under the Administrative
11 Procedure Act or other applicable law as agency action.

12 (a) Actions include new and continuing activities, including projects and
13 programs entirely or partly financed, assisted, conducted, regulated, or approved
14 by federal agencies, new or revised agency rules, regulations, plans, policies, or
15 procedures, and legislative proposals (Secs. 1506.8, 1508.17) ...

16 (b) Federal actions tend to fall within one of the following categories:

17 (1) Adoption of official policy, such as rules, regulations, and interpretations
18 adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.;
19 treaties and international conventions or agreements; formal documents
20 establishing an agency's policies which will result in or substantially alter agency
21 programs.

22 (2) Adoption of formal plans, such as official documents prepared or approved by
23 federal agencies which guide or prescribe alternative uses of Federal resources,
24 upon which future agency actions will be based.

25 (3) Adoption of programs, such as a group of concerted actions to implement a
26 specific policy or plan; systematic and connected agency decisions allocating
27 agency resources to implement a specific statutory program or executive
directive.

(4) Approval of specific projects, such as construction or management activities
located in a defined geographic area. Projects include actions approved by permit
or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.27 Significantly.

Significantly as used in NEPA requires considerations of both context and
intensity:

(a) Context. This means that the significance of an action must be analyzed in
several contexts such as society as a whole (human, national), the affected region,
the affected interests, and the locality. Significance varies with the setting of the
proposed action. For instance, in the case of a site-specific action, significance
would usually depend upon the effects in the locale rather than in the world as a
whole. Both short- and long-term effects are relevant.

NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 12

Comment O-9

1	(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:
2	(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
3	(2) The degree to which the proposed action affects public health or safety.
4	(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
5	(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
6	(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
7	(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
8	(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
9	(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
10	(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
11	(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.
12	
13	BLM must produce evidence of a cumulative impact determination involving all of
14	BLM's air pollution activities. Cumulative impacts are those impacts that result from the
15	incremental impact of an action, decision, or project in combination with other past, present, and
16	reasonable foreseeable future actions, regardless of the agency (Federal or non-federal) or person
17	undertaking such other actions. Cumulative impacts can result from individually minor but
18	collectively significant actions over a period of time, from similar projects or actions, and from
19	projects or actions which have similar impacts <u>See</u> , 40 CFR Part 1508.7. There is a basis for the
20	cumulative impact claim and the basis is mandatory.
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NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 13

Comment O-9


- 19 The cumulative impact analysis considers the impacts of related activities that may occur in the Las Vegas Valley, including development of previously disposed lands and development of lands that have been under private ownership prior to the start of the land disposal process. The cumulative impacts analysis is provided in Section 4.15.

19	<p>The "exempt" claims will not cause a court to defer to an agency interpretation of a statute the agency is not charged with administering. <i>United States v. Corey</i>, 232 F.3d 1166, 1183 (9th Cir. 2000). Further, when a statute is administered by more than one agency, a particular agency's interpretation is not entitled to deference. Agency interpretations developed informally (i.e., not through formal adjudication for notice and comment rulemaking) do not warrant deference. <i>Scales v. I.N.S.</i>, 232 F.3d 1159, 1185-1166 (9th Cir. 2000). The court may refuse to defer to an agency's interpretation of a particular statute (even though within the agency's expertise) if the agency has not consistently interpreted the provisions issue. <i>State of Oregon v. BLM</i>, 876 F.2d 1419, 425 (9th Cir., 1989).</p> <p><i>Kern v. United States BLM</i>, 284 F.3d 1062, 1072 (9th Cir. 2002).</p> <p>The regulations define "cumulative impact" as:</p> <p>the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.</p> <p><i>Id.</i> 1075. 40 C.F.R. § 1508.25(a).</p> <p>In determining the significance of a proposed action an agency must consider</p> <p>Whether the action is related to other actions with individually insignificant but cumulatively significant impact on the environment. Significance exists if it is reasonable to anticipate cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.</p> <p>40 C.F.R. 1508.27(b) (1)-(10). See also <i>Churchill County v. Norton</i>, 276 F.3d 1060, 1072 (9th Cir. 2001).</p> <p>NO WATER</p> <p><i>Id.</i> at 2, 1.3. Need for Proposed Action. "Las Vegas metropolitan area is one of the fastest growing urban areas in the United States." The area has also exceeded its water allotments.</p> <p>NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 14</p> <p>Comment O-9</p>
20	

20 The analysis of water resources management and supply alternatives is based on the analysis provided in the Southern Nevada Water Authority Resource Management Plan. The BLM does not have any authority over decisions regarding growth of the customer base by water suppliers in the Las Vegas Valley. Allocation and withdrawals are based on proposals made by water users and are approved by the appropriate authorities for different resources, such as the Bureau of Reclamation for Lake Mead and the Nevada State Engineer's Office for ground water withdrawals.

1	The area is now in the worst drought the area has seen for many years. The lake is expected to
2	keep on dropping for several years. Lake Mead is not only the Las Vegas Valley's main water
3	supply, it is the means by which we recycle treated sewage. This Winter is expected to be
4	warmer than usual further endangering an already overtaxed primary water source. The BLM has
5	consistently failed to deal with this issue despite the fact that one obvious alternative is to slow
6	down or halt more water hook-ups.
7	ARGONNE NATIONAL LABORATORY
8	The BLM has yet to fully reveal its assumptions and the trade-offs regarding either its or
9	the Argonne National Laboratory's air quality modeling. In order to analyze these data, the
10	decisions made in the entire analysis must be transparent to the reader. That has not yet
11	happened. Petitioner Hall requests a full disclosure of all of the assumptions and decisions
12	regarding each analysis. Without that information, Hall and other members of the public are in
13	the dark regarding easily manipulated computer models. Hall requests that the BLM adopt a
14	manual or detailed policy that will aid in the public's duty to participate and comment regarding
15	all of the data. For that reason, Hall requests additional time and the coordination necessary to
16	gain confidence with the data.
17	
18	<u>/s/ Robert W. Hall</u>
19	ROBERT W. HALL, President
20	Nevada Environmental Coalition, Inc
21	and as an individual.
22	
23	
24	
25	
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NEVADA ENVIRONMENTAL COALITION, INC./ROBERT W. HALL COMMENTS - 13	
Comment O-9	

- 21 The Argonne air quality modeling assumptions and methods are documented in the report prepared on the modeling effort. This report is incorporated by reference in the EIS, as specified in 40 CFR §1502.21. The document is available for review on the project website at <http://www.nv.blm.gov/lvdiseis>



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FIELD OFFICE
Las Vegas, Nevada

November 9, 2004

Las Vegas Valley BLM Land Disposal EIS
Mark T. Morse – Field Manager
c/o PBS&J
2270 Corporate Circle, Suite 100
Henderson, NV 89074-6482


RE: Submittal of comments and questions on Land Disposal EIS
(Submitted via e-mail 9 November 2004)

Dear Mr. Morse:

Attached are comments and questions from Nevada Power Company environmental scientists with input from other personnel within the Company. While this submittal is one day beyond the published November 8, 2004 public comment period we respectfully request these comments be included in the official record as a result of the informal deadline extension noted at the Upper Las Vegas Wash Management and Mitigation Strategies meeting held on Monday, November 1, 2004. Please add the Nevada Power Company Environmental Services Department to your mailing list and provide us with three hard copies and one electronic copy of the final EIS.

Thank you for the opportunity to review and comment on the Land Disposal EIS.

Sincerely,


Paul B. Aguirre
Environmental Scientist III
Nevada Power Company – MS 30
6226 W. Sahara
Las Vegas, Nevada 89146

Comment B-1

Comment Number	SECTION	COMMENT
1	ES.2	The Proposed Action is stated many different ways and not consistent throughout the entire document.
2	ES.2.1	How would transfer of title violate the Endangered Species Act? The numbers (acres of land) described here are very confusing and don't seem to "add up".
3	ES.3	5 th sentence: how would an administrative action of transferring land title directly impact a user of the land? What is meant by "non-environmental impacts"?
4	ES.3.1	It is not known if Mojave Generating Plant will close.
5	ES.3.4	Suggest surface-disturbing activities be described as indirect impacts.
6	1.2	Is the proposed action being described here as the P&N?

Response B-1 (Nevada Power Company)

- 1 The description of the Proposed Action in the Executive Summary was a summary of the Proposed Action as described in Chapter 2.
- 2 The transfer of title assumes subsequent development of the land, which could impact endangered species habitat. There are 40,232 acres available for disposal of the 46,701 acres remaining. As was stated in Section ES 2.1, the difference is the 6,469 acres of lands leased and reserved under the Recreation and Public Purposes Act.
- 3 As was stated in Section ES.3, transfer of title places the land into private ownership that would directly impact the user of the land when it was under BLM management. An impact to a user of the land is considered non-environmental.
- 4 Closure of the Mojave Plant was reported based on best available information at the time the Draft EIS was prepared. Closure of the plant is anticipated because of a consent decree requiring pollution controls to reduce sulfur dioxide emissions. However, if the plant operator installs the required pollution controls, including scrubbers and baghouses, up to 99% removal of pollutants would be achieved. Under either scenario (closure or retrofitting), plant emissions would be greatly reduced after the compliance deadline of the consent order, which is accurately reflected in the changes in emission sources used in the model.
- 5 Surface disturbing activities associated with BLM actions (i.e., issuance of realty actions) would be direct impacts, whereas surface disturbing activities occurring after transfer of title would be indirect impacts of the land disposal action.

7	2.3	<p>Alignments and linear ROWs along section lines are discussed here; NPC would like the BLM to also address non-linear ROWs in this section (i.e. – substations, etc.)</p> <p>6th ¶: What happens to the BLM grant stipulations for surface-disturbing activities that occur on BLM lands that have been disposed and subsequently under private ownership at time of surface disturbance?</p> <p>1st bullet: please add “electrical substation”</p> <p>2nd bullet: please delete “transmission line” and replace with “electrical facilities”</p> <p>Temporary ROWs – please add a bullet: “construction of electrical facilities” (to cover tensioning and pulling sites, work areas, etc.)</p> <p>9th ¶: Please add “electrical substations”</p> <p>10th ¶: NPC requests a change to the 2nd to last sentence – “The ROW width for above-ground electrical lines is determined by the final design and requirements as established by the electrical utility.”</p>
8	2.4	<p>How will private utilities be represented in the strategy committee planning process so that our concerns are included and addressed? NPC suggests adding bullets for “Public at Large” and “Utilities”</p>
9	3.4.1.2	<p>NV Cacti, Yuccas and Conifers: Were no buckhorn cholla, hedgehog, <i>Escobaria</i> or other species encountered?</p>

- 6 The Proposed Action and the Conservation Transfer Alternative both meet the purpose and need for land disposal.
- 7 Only linear ROWs were assessed. Grant stipulations apply to BLM lands; lands are sold subject to encumbrances and become privately owned property upon receipt of a patent. Appropriate revisions to the text were made to remain within the extent of the analysis.
- 8 As was stated in Section 2.4, the list of representatives was not all inclusive. The members are listed in Chapter 5 and Nevada Power has been added under Businesses.
- 9 The species observed in the field were listed. Buckhorn cholla (*Opuntia versicolor*) is not a component of the Mojave Desert.

10	3.4.2.1	Species known to occur are listed in Table 3.4-2, however, the disposal area boundary contains suitable habitat for many other special-status species such as: southwestern willow flycatcher, Yuma clapper rail, yellow-billed cuckoo and several species of bats (Table B-1). Why are these species not addressed as well?
11	3.4.2.1	Migratory Birds: What is considered “notable migratory birds”?
12	3.8.2	3 rd ¶: States “There were no Class I lands adjacent to the disposal boundary area.” Please address how the Desert National Wildlife Range, Sunrise Management Area, Rainbow Gardens and River Mountains ACEC classified with respect to VRM?
13	Figure 3.9-2	This figure doesn’t seem to accurately reflect all of the utility (power, gas, water) ROWs within the disposal area. Is it BLM’s intent to show all ROWs?
14	3.9.4	Section states there is no planned land use data available for some BLM lands; however Figure 3.9-3 reflects “No Planned Land Use”. Is there no planned land use or simply no data available at this time? (same comment for Figure 4.9-1)
15	3.12.7.1	NPC requests this section be updated as follows: “Nevada Power Company, a subsidiary of Sierra Pacific Resources, provides safe, reliable and cost-effective electric service to more than 700,000 residential and commercial customers in Las Vegas, North Las Vegas, Henderson, Laughlin, Primm, unincorporated Clark County and small parts of Nye and Lincoln Counties. Nevada Power Company generates electricity at four generating plants in southern Nevada and also purchases electricity from the Hoover Dam generation facility and elsewhere.”

- 10** As was stated in Section 3.4.2.1, the table contains a list of special status wildlife species that are known to occur within or near the disposal boundary area, not what species habitat may occur in the area.
- 11** The word has been deleted.
- 12** Areas adjacent to the disposal boundary area (see Figure 1.3-2) are within the VRM Class III, including Sunrise Management Area (which includes Rainbow Gardens). The River Mountains ACEC is not located directly adjacent to the disposal boundary. The Desert National Wildlife Range is managed by the U.S. Fish and Wildlife Service and thus is not classified by the BLM in terms of VRM.
- 13** As was stated in section 3.9.3, the figure shows the ROWs on the remaining BLM managed lands. Available data and scale affect was can be seen.
- 14** As was stated in Section 3.9.4, there is no planned land use for the areas shown based on available data.
- 15** The information provided in the EIS is referenced to the Sierra Pacific/Nevada Power web pages and is accurate as per that source.

16	3.13	Suggest EJ be described as ensuring the fair and equitable treatment of all people by ensuring your federal action does not disproportionately impact low-income/minority populations.
	CHAPTER 4	
17	1 st ¶	The purpose of this chapter may more accurately be described as analyzing the potential impacts of each of the three alternatives.
18	Types of Impacts	2 nd ¶: Who, or what criteria, determines what an “undesirable effect” is?
19	Analysis Methods And Assumptions	<p>4th ¶: This paragraph seems to have a series of contradicting statements:</p> <ul style="list-style-type: none"> - The 1st sentence states land use activities after disposal would have direct impacts, but in the 2nd ¶ of this same section it is stated, “land use management would be determined by decisions of the new owners”. - The 2nd sentence states that the “disposal action and subsequent transfer of title” (are these 2 separate federal actions, or one single federal action?). These are administrative actions and would have no direct impacts. - The 3rd sentence states that “transfer of title would directly impact users of the land (i.e., non-environmental impacts)” - The end of this paragraph states that land use changes are indirect impacts. <p>Suggest that all resource sections of the EIS be verified that direct and indirect impacts of the federal action are accurately depicted and described.</p>

- 16 The wording provided in the EIS for the definition is per Executive Order 12898.
- 17 The federal action is any one of the three alternatives.
- 18 Specific criteria are introduced at the beginning of each resource section.
- 19 The sentences are not contradictory and the analysis describes the impacts accordingly.

20	Analysis Methods and Assumptions (continued)	<p>7th ¶: 4th - 7th bullets: These bullets describe alignments and linear ROWs but do not address sites or non-linear ROWs. ROW alignments for NPC are typically located along section and ½ section lines.</p> <p>NPC suggests striking last sentence from 6th bullet. As a replacement to this sentence, NPC requests the BLM to add an additional paragraph in this section that explains that every ROW and R&PP request submitted to the BLM undergoes a separate environmental review (NEPA and ESA) by the BLM.</p>
21	4.4.4	Avoidance should also be included as a mitigation measure.
22	4.7.1	Last ¶: suggest change “However, any adverse indirect impacts resulting from the federal action (disposal) would be minimized and thus insignificant.
23	Figure 4.9-1	Legend does not coincide with the figure
24		Did the BLM include rental fees received from issuance of ROW grants, and tortoise mitigation fees collected towards the Desert Tortoise Public Lands Conservation Fund in the analysis of the EIS?
25		Would implementation of the No Action Alternative go against the intent of the SNPLMA and County Act? If so, this isn't presented in the document under the No Action Alternative consequences (Ch 4).
26		In the Executive Summary, the analysis criteria is not consistent throughout the No Action, Proposed Action and Conservation Transfer (i.e. - Water Quality: Conservation Transfer and Proposed Action describe soil erosion, etc. but these are not addressed under the No Action. Soil erosion will still occur under the No Action.). Suggest all resource sections consistently describe impacts resulting from all three alternatives.

- 20 The assumptions used in the analysis are as stated.
- 21 Avoidance as a mitigation measure is discussed in the introductory section of Chapter 4.
- 22 No land disposal would occur under the No Action Alternative (Section 4.7.1). Issuance of ROWs would have direct impacts from surface disturbing activities.
- 23 The legend was revised.
- 24 As was stated in Section 4.12 and described in Appendix E, economic impacts would be from development of the disposed lands using IMPLAN model data for Clark County, which is a compilation of sources.
- 25 As was stated in Section 2.1, the No Action Alternative is required by NEPA to provide a baseline for comparison of impacts of the other alternatives, even when the No Action Alternative may not be implemented. Chapter 4 is an analysis of environmental impacts and not an assessment of the intent of SNPLMA.
- 26 The Executive Summary is a summary and is not meant to be all inclusive of the results of the document.

27		NPC suggests identifying or delineating the Upper and Lower Las Vegas Wash areas, and specifically note which area is being discussed in the text.
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27 Refer to Figure 3.3-1.